

EXHIBIT M

In The Matter Of:
Hodell-Natco Industries, Inc. v.
SAP America, Inc, et al.

Terry Phillips
August 2, 2012

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

3 HODELL-NATCO)
4 INDUSTRIES, INC.,) Judge: Lesley Wells
5 Plaintiff,) Magistrate Judge:
6) Greg White
7 vs.) No. 1:08 CV 2755
8 SAP AMERICAN, INC.,)
9 ET AL.,)
10 Defendants.)

11 - - -

12 VIDEOCONFERENCE DEPOSITION OF TERRY PHILLIPS

13 DATE: Thursday, August 2, 2012

14 TIME: 10:00 a.m.

15 PLACE: Reminger & Reminger
16 1400 Midland Building
17 101 Prospect Avenue, West
18 Cleveland, Ohio 44115

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Page 2

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Page 3

1 W I T N E S S I N D E X

2

3 PAGE

4 DIRECT EXAMINATION
5 TERRY PHILLIPS 4 & 109
6 BY MR. STAR

7 EXAMINATION
8 BY MR. HULME

9 EXAMINATION
10 BY MR. LAMBERT

11 E X H I B I T I N D E X

12 EXHIBIT NO. DESCRIPTION PAGE

13 Deposition 335 E-mail chain 3/17/08 71

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Page 4

1 TERRY PHILLIPS,
2 called as a witness herein, having been first duly
3 sworn, as hereinafter certified, was examined and
4 testified as follows:
5 DIRECT EXAMINATION OF TERRY PHILLIPS
6 BY MR. STAR:

7 Q. Good morning, Mr. Phillips, my
8 name's Greg Star, I'm an attorney for the law
9 firm called Drinker, Biddle and Reath in
10 Philadelphia, and I represent SAP America and
11 SAP AG in connection with a lawsuit filed by
12 Hodell-Natco against SAP and LSI.
13 Do you understand you're here to
14 give a deposition today in that case?
15 A. Yes.
16 Q. Okay. Have you ever given a
17 deposition before?
18 A. No.
19 Q. Couple ground rules. It's fairly
20 easy. I'll be asking you questions, you will
21 be giving me answers. If you don't understand
22 a question, let me know. Okay?
23 A. Okay.
24 Q. Yes? I always like to do that
25 first because people always just nod their

<p style="text-align: right;">Page 21</p> <p>1 Q. What's your basis for that? Did 2 you do it yourself, did you think somebody else 3 did that? 4 A. I don't recall. 5 Q. What exactly did you personally 6 perceive with respect to the performance 7 issues, the slowness that you identified prior 8 to Go-Live? 9 A. What did I perceive? Can you 10 elaborate? 11 Q. Sure. I'm trying to find out what 12 you personally witnessed. 13 A. What I personally witnessed. So, 14 yeah, in most of the testing with large user 15 groups, I noticed that the SAP slash InFlight 16 side of it was very slow. 17 Q. What do you mean by very slow? 18 A. I remember trying to test a 19 ten-line sales order, I believe, entering a 20 ten-line sales order and it taking like 21 15 minutes or something absurd like that. 22 Q. And that was not an acceptable 23 amount of time? 24 A. No. 25 Q. Okay. When do you recall testing</p>	<p style="text-align: right;">Page 23</p> <p>1 personally witnessed before the Go-Live of this 2 solution, you saw slowness around this entire 3 system; is that true? 4 A. Not around the entire system, 5 slowness around SAP and InFlight. 6 Q. Okay. So what do you carve out of 7 that, the Radio Beacon portion? 8 A. The Radio Beacon portion, specific 9 functions within the warehouse weren't very 10 slow. 11 Q. Were you there at Hodell at the 12 time Hodell went live on the Business One 13 solution with InFlight and Radio Beacon? 14 A. Yes. 15 Q. Between the time of the stress 16 testing that took place and the Go-Live on the 17 solution, was there any performance 18 improvements with respect to speed? 19 A. Sure. 20 Q. What were those improvements? 21 A. Yeah, you know, I don't know exact 22 numbers, but, I mean, there was performance 23 increase over time. You know, we would come 24 back to LSi with the, through our testing, this 25 is slow, that is slow, and they would, they</p>
<p style="text-align: right;">Page 22</p> <p>1 the ten-line sales order that took 15 minutes? 2 A. I don't recall. 3 Q. But you're sure it was before the 4 Go-Live on the SAP solution; right? 5 A. Correct. 6 Q. Other than this sales order, were 7 there other processes that you personally 8 witnessed being slow before the Go-Live? 9 A. I mean, yeah. The entire system 10 as far as SAP and InFlight is concerned was 11 slow. 12 Q. So it was with sales orders; 13 right? 14 A. Uh-huh. 15 Q. Yes? 16 A. Yes. 17 Q. Purchase orders? 18 A. Yes. 19 Q. What other functions? 20 A. Basically anything that you would 21 need to do in the system. I mean, any function 22 that was in SAP Business One or InFlight added 23 onto the system was very slow to begin with. 24 Q. Okay. So is it fair to say that 25 in your personal view based on what you</p>	<p style="text-align: right;">Page 24</p> <p>1 would try and fix issues. But the overall, I 2 mean, we never got to a point where it was as 3 fast as it should have been. 4 Q. Okay. What I'm interested in 5 knowing is what was your, what did you see the 6 system doing right before Go-Live? Was there, 7 was there still slow performance that was 8 unacceptable to Hodell before Go-Live or was 9 the performance across the board completely 10 acceptable? 11 A. No, it was not completely 12 acceptable. 13 Q. What part of the performance just 14 prior to Go-Live was not acceptable to Hodell? 15 A. The speed. I'm sure that there 16 were some issues with functionality, but the 17 majority of the issue was with performance 18 speed of the system. 19 Q. Okay. So talking about what you 20 personally saw just before the Go-Live on this 21 solution and pertaining to the speed issues, 22 what specifically are you referring to that was 23 unacceptable with respect to speed? 24 A. The system in general. I mean, 25 SAP Business One and InFlight. And the reason</p>

<p style="text-align: right;">Page 25</p> <p>1 why I say those two is because the two, when 2 you have both of them running, it was hard to 3 distinguish between the two because it was an 4 add-on. But both of those, the entire system 5 was lagging. 6 Q. So just before Go-Live, for 7 instance, did you personally witness the sales 8 order process and see how long it would take to 9 enter, for instance, a ten-line item order? 10 A. Sure. I mean, we ran through all 11 those tests -- 12 Q. Okay. What did you see when you 13 ran those tests right before you went live? 14 A. I don't recall the exact numbers, 15 but I believe that it was somewhat faster, but 16 it was still very slow. 17 Q. And you say very slow. Was it to 18 a point where it was acceptable performance for 19 Hodell or was it still completely unacceptable 20 at that point? 21 A. It was still unacceptable. 22 Q. What about the purchase order 23 process, did you test that right before Go-Live 24 and personally witness what the performance 25 was?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Marcia Weissman. Yeah, I don't 2 recall other people, but I did voice my 3 opinion. 4 Q. And what exactly was your opinion 5 at that time just before Go-Live? 6 A. That the system was still very 7 slow. 8 Q. Did you have an opinion that you 9 reached just before Go-Live as to whether 10 Hodell should actually go live or if Hodell 11 should wait? 12 A. Yes. I thought that we should 13 wait and try to work out the issues. 14 Q. Did you express that opinion to 15 anybody? 16 A. Yeah, I expressed it to Kevin and 17 the LSi side. 18 Q. What do you recall telling Kevin 19 Reidl specifically with respect to your opinion 20 that Hodell should wait and not go live? 21 A. Other than that, I don't remember 22 specifically what was said. 23 Q. Okay. The decision, though, was 24 made to go live over -- even though you held 25 the opinion that Hodell should wait; correct?</p>
<p style="text-align: right;">Page 26</p> <p>1 A. I want to say that we tested the 2 same, you know, test cases that we did at any 3 other time, which would have been most of the 4 major functionality in the system. 5 Q. Is it fair to say that in your 6 personal experience, based on what you 7 witnessed, that although there had been some 8 improvements in performance and speed of this 9 system from the earlier stress test up to the 10 time of Go-Live, that right before the time of 11 Go-Live, you personally knew that the speed and 12 performance was unacceptable to Hodell; is that 13 fair? 14 A. It's fair. 15 Q. Did you tell anybody at Hodell 16 that you thought the speed and performance was 17 unacceptable right before Go-Live? 18 A. Sure. I mean, everyone knew the 19 results of the tests. Yeah, I voiced my 20 opinion. 21 Q. Okay. Who did you voice your 22 opinion to? 23 A. Kevin, the project manager at, or 24 I'm sorry, I don't know if it was Marcia. 25 Q. Marcia Weissman?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yeah. 2 Q. And what transpired with respect 3 to the solution right after Go-Live? 4 A. What transpired with respect to 5 the solution? 6 Q. Better question is what did you 7 personally witness the solution doing right 8 after Go-Live so far as performance and speed 9 issues? 10 A. The same as before we went live, 11 slow. 12 Q. Slow. Was it slower, was it 13 faster, was it about the same? 14 A. I don't recall, you know, what the 15 difference was right before we went live. I 16 want to say that it was probably the same. 17 Q. Do you remember what month in 2007 18 you actually got your degree from Regis 19 University in computer science? 20 A. I believe it was June or July. 21 Q. So do you recall when Hodell went 22 live on the Business One system? 23 A. I believe it was March. 24 Q. Of 2007? 25 A. Yes, I believe so.</p>

<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. So you were at that point 2 just about done with your studies at Regis to 3 get your computer science degree? 4 A. Yes. 5 Q. Okay. Did Hodell fund in any way 6 your education at Regis? 7 A. No. 8 Q. They knew you were taking classes 9 at Regis to become computer science? 10 A. Yes. 11 Q. Okay. Was there anybody else, to 12 your knowledge, at Hodell that held a computer 13 science degree at the time of the Go-Live in 14 March of 2007? 15 A. No. 16 Q. Do you have an understanding of 17 why Kevin Reidl didn't take your advice and 18 wait and not go live in March of 2007? 19 A. No. 20 Q. You say that right after the 21 Go-Live, you saw the same speed and performance 22 issues that you had experienced before Go-Live. 23 Was that a surprise to you in any way? 24 A. No. 25 Q. Why not?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. While Hodell was running on the 2 FACTS software, do you personally know how long 3 it would take on the FACTS software to enter 4 any particular kind of sales order, for 5 instance, a ten-line sales order? 6 A. Sure. It was very fast, but the 7 FACTS system was a different type of system 8 than SAP. 9 Q. Okay. When you say very fast, 10 what do you mean? 11 A. Almost instantaneous. There was 12 no lag. When you entered a line on the sales 13 order, there was no lag. 14 Q. Did you or anybody at Hodell, to 15 your knowledge, ever do any study of exactly 16 how fast FACTS was processing sales orders? 17 A. I don't think so. I mean, other 18 than visually seeing. 19 Q. So it's just -- so far as you know 20 the only feedback that you or others at Hodell 21 had with respect to the speed of the FACTS 22 system was just personally observing how 23 quickly the system reacted; is that true? 24 A. Correct. I mean, it was that 25 noticeable. You could just visibly see the</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Because nothing was done at LSi or 2 SAP, to my knowledge, to speed it up. 3 Q. So you personally fully expected 4 that the problems that you witnessed just 5 before Go-Live would still exist at Hodell when 6 you turn the switch and you went live on the 7 solution; correct? 8 A. I don't know. I don't recall what 9 LSi was saying that they were going to do about 10 the situation, because at this point it was in 11 their hands to, you know, find a solution. 12 Q. Well, what was your expectation? 13 Did you expect that when you went live, when 14 Hodell went live on the system that you would 15 see performance issues, speed issues with the 16 system? 17 A. Yeah, I thought that that was 18 going to be the case. 19 Q. And why did you think that? 20 A. Because we had those issues right 21 before Go-Live when we were testing. 22 Q. And those were the issues that you 23 made Kevin Reidel and others within Hodell 24 aware of? 25 A. Correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 difference. 2 Q. Prior to going live on the SAP 3 solution, did you create any study or document 4 of exactly how long the different SAP processes 5 were taking to complete, versus what had been 6 done on FACTS? 7 A. I don't recall. I don't think so. 8 Q. But in your view, the slowness 9 issues that you saw before Go-Live were just 10 perceptible to the human eye; right? 11 A. Sure. 12 Q. Okay. And you understand, based 13 on your experiences as a person with a computer 14 science degree and working in this field that 15 there can be different performance issues in a 16 computer system, but as long as they're not 17 perceptible to the user, it usually doesn't 18 make a difference; right? 19 MR. LAMBERT: Objection. 20 A. Sure. 21 Q. Okay. Do you have any information 22 as to how long it took a user on the FACTS 23 system to enter a sales order? 24 MR. LAMBERT: Objection. 25 A. I don't recall. I mean, like I</p>

Page 57

1 testing within the company. I mean, for
2 instance, I mean, entering a sales order with
3 our terms and all of our data can only really
4 be done truly by us.
5 Q. And was that done by Hodell?
6 A. Yes.
7 Q. Before going live?
8 A. Yes.
9 Q. And you did that before going live
10 and you saw all those performance problems that
11 you talked about earlier today; right?
12 A. Yes.
13 Q. Okay. Would you agree that some
14 responsibility then falls to the end user, to
15 Hodell in this situation, for making a decision
16 to go live even though it was fully aware of
17 these performance problems before it went live?
18 MR. LAMBERT: Objection, form,
19 foundation.
20 A. I don't know what the conversation
21 was between those who made the decision at
22 Hodell and LSi, SAP, I don't know what was
23 promised or anything like that, so. But, yeah,
24 I mean, sure, some of the responsibility does
25 fall on us for going ahead with implementation.

Page 58

1 Q. And your recommendation at the
2 time was that you should not, that Hodell
3 should not go forward with the Go-Live with
4 that speed and performance issue that you had
5 seen just before going live; right?
6 A. Yeah, I recommended that we should
7 wait and have LSi fix some of the issues.
8 Can we take a quick break?
9 Q. Yes, sure.
10 (Thereupon, a short break was taken.)
11 Q. (By Mr. Star) Just prior to the
12 Go-Live on the SAP system, Hodell was still
13 running the FACTS solution; correct?
14 A. Yes.
15 Q. Was there any reason why Hodell
16 had to get off that system at any particular
17 time, if you know?
18 A. I don't, I don't recall.
19 Q. Hodell was actually running its
20 business using FACTS?
21 A. Yes, before we went, I mean, we
22 moved to SAP.
23 Q. Do you recall there being any kind
24 of desperate performance issue with FACTS or
25 something that was forcing Hodell to get off of

Page 59

1 that software and Go-Live on Business One?
2 A. Desperate? No, I don't recall.
3 Q. During the time you were in
4 college working toward your computer science
5 degree, did you take any classes with respect
6 to software implementation projects, project
7 management, those sorts of topics?
8 A. Yeah, my degree was, it had a lot
9 of project management and.
10 Q. Did you have a specific emphasis
11 during your degree on project management?
12 A. Sure, yeah, my degree did cover
13 project management.
14 Q. Had you taken project management
15 related courses prior to the time Hodell went
16 live in March, 2007?
17 A. Yes.
18 Q. Did you learn during those courses
19 what the basic relationship is between a
20 systems integrator or systems implementer and
21 the client?
22 A. Yes.
23 Q. And what did you learn in general?
24 A. What did I learn in general?
25 Q. Yeah, how does that relationship

Page 60

1 work in general in the software implementation
2 field?
3 MR. LAMBERT: Objection.
4 A. Yeah, I mean, I don't recall
5 exactly what the relationship is.
6 Q. Do you recall learning in those
7 courses that in general some of the
8 responsibility for the implementation falls
9 onto the client, the end user?
10 A. Sure.
11 Q. Those were things like making sure
12 they've tested the solution in their own
13 environment because they are the only ones that
14 can actually do that?
15 A. Sure.
16 Q. Okay. And you knew this before
17 Hodell went live?
18 A. Yeah, we did do that before we
19 went live.
20 Q. To your knowledge, was there
21 anybody else at Hodell who had taken those
22 specific kinds of courses besides yourself
23 prior to going live on the Business One
24 solution?
25 A. To my knowledge, no, I don't know